

Maharajadhiraja Sir Kameshwar Singh

Vs

Commissioner of Income-Tax, Bihar and Orissa

Civil Appeal No. 357 of 1958

(S.K. Das, J.C. Shah JJ)

25.10.1960

JUDGMENT

SHAH J. -

The appellant executed a deed of trust settling certain lands described in schedule "A" and the rents of lands described in schedule "C" for the maintenance of certain temples and Thakoorbaries. The material terms of the deed of trust are :

cl. 6 :- "And whereas the declaration feels that a Declaration of Trust should be made whereby the income of a part of the Raj properties may be earmarked and specially devoted to the maintenance of the aforesaid institutions as also the Declarant may as hitherto treat himself and be treated by others as a legal Trustee of the said institutions and the properties out of the income of which the said maintenance is being and will be provided for."

cl. 7 :- "The declarant declares that henceforth he holds and will hold the properties detailed at the foot thereof in Schedule "A" in trust for religious purposes of maintaining the religious institutions more fully described in Schedule "B" annexed hereto."

cl. 8 :- "The declarant further declares that in all lands now held by him in the aforesaid properties as Bakast or proprietor's private lands as in the schedule "C" which are in direct Khas cultivation of the Declarant shall henceforth be or continue to be his tenancy lands for which the Declarant shall pay the rental as noted against such lands, annually to the "trustee for the use and benefit of the aforesaid institutions and the rights of the Declarant in them shall be those of a rayat under the Bihar Tenancy Act."

The net income of all the lands set out in Schedule "A" after providing for the expenses of management and the taxes payable there was estimated at Rs. 1,81,717 and the net rental of the properties described in Schedule "C" was estimated at Rs. 10,208 and from the aggregate of these two amounts after deducting 15% as trustee's remuneration, the balance of the income estimated at Rs. 1,63,136-4-0 was to be utilised for the objects of the trust.

In the assessee's income determined by the Income Tax Officer for the assessment year 1950-51, Rs. 6,000 were included as income from non-agricultural properties of the trust. In the view of the Income-tax Officer, the trust was not a public religious trust and the income derived from properties

not used for agriculture was not exempt from liability to pay tax in the hands of the appellant. In appeal against the order of assessment, the Appellate Assistant Commissioner held that the income coming to the hands of the appellant from the trust properties was not taxable as private income of the appellant, but in his view, the remuneration amounting to Rs. 21,274 computed at the rate of 15% on the net income of the trust properties in the year in question not being agricultural income in the appellant's hands was liable to be taxed. In appeal to the Income-tax Appellate Tribunal, Patna Bench, Patna, the order passed by the Appellate Assistant Commissioner in so far as it related to remuneration received by the appellant was affirmed. The High Court of Judicature at Patna there after at the instance of the appellant directed the Income-tax Appellate Tribunal to submit a statement of the case on five questions set out in the order. The fifth question (which is the only questions material in this appeal) was as follows :

"Whether, in the facts and the circumstances of the case, the amount of Rs. 21,274 being the amount paid to the assessee in his character of a Shebait of the Trust properties should have been held to be exempted from taxation on the ground that it is agricultural income ?"

The High Court agreed with the Tribunal that the remuneration was received by the appellant under a contract, and it was not agricultural income, merely because the source of the money was agricultural income. The High Court accordingly answered the fifth question "against the assessee." This appeal is filed by the appellant with leave under section 66A(2) of India Income-tax Act granted by High Court limited to the question whether the amount received by the appellant from the trust property in his character as a shebait was exempt from liability to pay income-tax.

The material part of the definition of "Agricultural income" in section 2(1) is as follows :

"Agricultural income" means

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in the taxable territories or subject to a local rate assessed and collected by officers of the Government as such.

#(b) "##

Agricultural income falling under clause (a) ought manifestly to be received as rent or revenue derived from land used for agricultural purposes. The income received from agricultural properties of the trust by the appellant as trustee was indisputably agricultural income in his hands and it was by virtue of section 4(3)(viii) exempt from liability to pay tax. The appellant claims that the remuneration which by the covenant contained in the deed of trust he has received is also exempt under section 4(3)(viii) because, when he appropriated a fraction of the rent or revenue of agricultural lands towards his remuneration, the original character of the income was not altered.

The appellant has no beneficial interest in the lands which are the subject-matter of the trust : nor is he given under the trust a right to receive and appropriate to himself the income of the properties or a part thereof in lieu of any beneficial interest in that income. The source of the right in which a fraction of the net income of the trust is to be appropriated by the appellant as his remuneration is not in the right to receive rent or revenue of agricultural lands, but rests in the covenant in the deed to receive remuneration for management of the trust. The income of the trust appropriated by the appellant as remuneration is not received by him as rent or revenue of land; the character of the

income appropriated as remuneration due is again not the same as the character in which it was received by the appellant as trustee. Both the source and character of the income are therefore altered when a part of the income of the trust is appropriated by the appellant as his remuneration, and that is so, notwithstanding that computation of remuneration is made as a percentage of the income, a substantial part whereof is derived from lands used for agricultural purposes. The remuneration not being received as rent or revenue of agricultural lands under a title, legal or beneficial in the property from which the income is received, it is not income exempt under section 4(3)(viii).

We may briefly refer to the authorities which illustrate the meaning of "agricultural income" in section 2(1) of the Income-tax Act.

In *Nawab Habibulla v. Commissioner of Income Tax, Bengal* ((1943) L.R. 70 I.A. 14.), Privy Council held that the remuneration received by a mutwalli of a wake estate, not depending on the nature of the properties or assets which constitute the wake nor on the amount of income derived from the wake estate, is not agricultural income within the meaning of section 2(1) of the Indian Income-tax Act even though the income derived by the wake estate is from properties used for agricultural purposes.

In *Premier Construction Co., Ltd. v. Commissioner of Income Tax, Bombay City* ((1948) L.R. 75 I.A. 246.), it was held by the Privy Council that income received by an assessee not itself of a character to fall within the definition of agricultural income does not assume the character of agricultural income by reason of the source from which it is derived, or the method by which it is calculated. But if the income received falls within the definition of agricultural income, it earns exemption, in whatever character the assessee receives it. In that case, the remuneration payable to a managing agent of a company in consideration of services to be rendered was a minimum annual salary of Rs. 10,000 payable irrespective of whether the company made any profit; but if 10% of the profits made by the company exceeded Rs. 10,000 the agent was to get an additional remuneration calculated as a percentage upon the profits of the company without regard to the source from which those profits were derived. One of the sources of income of the company was agricultural income. It was held by the Privy Council that the assessee received no agricultural income as defined by the Act : he received remuneration under a contract for personal service calculated on the amount of profits earned by the employer.

In *Commissioner of Income Tax, Bihar and Orissa v. Kameshwar Singh* (1935) L.R. 62 I.A. 215.) income received by a mortgagee who went into possession of properties mortgaged to him was held to be agricultural income; but that was because under the deed of mortgage, the mortgagee was to be in possession of the properties and in his relation to the cultivators of the soil, he stood in the position of landlord dealing directly with them and collecting the rents. The mortgagee had to pay Government revenue, cesses and taxes and his name was registered in the Land Registration Department. He alone was able to sue for rent whether current or arrears, to sue for enhancement or for enhancement and was able to settle lands with raiyats and tenants in all the properties; in fact, he was in a position to take all proceedings which the mortgagor would have been able to take in the ordinary course if the lands leased and mortgaged had remained in the mortgagor's possession. The mortgagee received the income, because of the legal ownership vested in him and even though under the covenant of the mortgage deed, he was required to appropriate the income towards his dues, the income in his hands did not cease to be agricultural income. In *Kameshwar Singh's case* (1935) L.R. 62 I.A. 215.) the court was called upon to consider the nature of the primary receipt by the mortgagee and not of the appropriation made under the covenant of the deed of mortgage.

In *K. B. Syed Mohammad Isa and another v. Commissioner of Income Tax*, the assessee was a mutwalli appointed under two deeds. Under both the deeds, he was to receive agricultural and non-agricultural income and to utilise the same for purposes of the trust. Under one of the two deeds of trust, the balance was to be retained by the mutwalli for his personal expenses and in the other in lieu of his services. It was held by the Allahabad High Court that the residue of the amounts retained by the mutwalli under both the deeds of trust was, as agricultural income, exempt from liability to pay tax. In the view of the court, though the language used in the two deeds of trust was different, the intention of the settler was the same : the mutwalli was required to perform the functions of his office and so long as he did so, he was entitled in consideration of this service to appropriate the residue of the profits. But in each case, the mutwalli was a beneficiary with an obligation attached to his enjoyment of the benefit, and had therefore two capacities, one as mutwalli and the other as beneficiary. The court on those facts held that the balance of the income from the zamindari went "through the mutwalli" to the beneficiary by virtue of an obligation imposed under the terms of the trust deed itself upon the income of the property. The mutwalli was the channel through which the beneficiary received the money and the beneficiary was to all intents and purposes the direct recipient of the income, and there was no change of source and no alteration in the character of the income. It remained agricultural income after it had passed into the hands of the beneficiary. In the present case, the appellant has no beneficial interest in the trust property. The appellant so far as his remuneration is concerned is again not the direct recipient of the income of the trust : the source and the character of the income are both altered when agricultural income is appropriated under the covenant in the deed of trust as remuneration for services rendered.

In this view, the appeal fails and is dismissed with costs.

Appeal dismissed.

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